

# **EXHIBIT**

## **F**

### **Proposed Notice of Lawsuit and Proposed Reminder Notice**

**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION**

*Pontones, et al. v. San Jose Restaurant, Inc., et al.,*

U.S. District Court, Eastern District of North Carolina, Western Division

Case No. 5:18-cv-219-D

**IF YOU WORKED AS A SERVER AT ANY OF DEFENDANTS' SAN JOSE RESTAURANTS, PLEASE READ THIS NOTICE ABOUT YOUR RIGHTS.**

- A court authorized this notice. This is not a solicitation from a lawyer.
- A former San Jose server has sued San Jose restaurants, claiming that she was not paid any wages during her employment with San Jose restaurants, and that she was not allowed to record her hours worked.
- The Court has not yet addressed whether San Jose Restaurants did anything wrong, and San Jose Restaurants denies any wrongdoing.
- The Court has not decided whether Defendants did anything wrong. There is no money available now, and no guarantee there will be any. However, your legal rights are affected, and you have a choice to make now, and you must act before (**ninety days from the date notice is mailed**), 2019:

**TO: ALL CURRENT AND/OR FORMER SERVERS OF SAN JOSE RESTAURANTS WHOSE PRIMARY DUTY IS/WAS NON-EXEMPT WORK, WHO WERE NOT PAID MINIMUM WAGE AND/OR OVERTIME, AND WHO ARE/WERE SUBJECTED TO DEDUCTIONS OF A FIXED PERCENTAGE OF ALL CREDIT AND CASH PURCHASES MADE BY DEFENDANTS' CUSTOMERS, WHICH BROUGHT THEIR WAGES BELOW THE MINIMUM WAGE, AT ANY TIME WITHIN THE THREE (3) YEAR PERIOD PRIOR TO THE FILING OF THIS LAWSUIT.**

*This is a Court-authorized Notice. This is not a solicitation from a lawyer.*

A lawsuit has been brought against Defendants San Jose Restaurants and the owners individually. Plaintiff Laura Pontones alleges that San Jose has violated the Fair Labor Standards Act ("FLSA") by not compensating servers for any time worked, including not paying minimum wage or overtime wages, as well as violating the North Carolina Wage and Hour Act ("NCWHA") by deducting a fixed percentage of all credit card and cash purchases made by Defendants' customers from servers' tips. Plaintiff seeks to recover unpaid wages, including the time and one-half premium for hours over forty (40) in a week.

The Court has allowed the lawsuit to be certified as a class action under the NCWHA and as a collective action under the FLSA on behalf of employees affected by Defendants' pay policies.

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| <b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b> |
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**FEDERAL LAW CLAIM**

WHAT YOU MAY DO:

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| <b>FILL OUT AND SEND MAIL THE CONSENT TO JOIN FORM ENCLOSED IN THIS NOTICE.</b>                        | By filling out and sending in the Consent Form, you will be bound by all decisions of the Court and will have the right to share in a monetary recovery, if any. You will also give up the right to sue Defendants separately about the same legal claims in this case.  |
| <b>DO NOTHING: STAY OUT OF THE CASE. HOWEVER, YOU ARE STILL A MEMBER OF THE CLASS AS STATED BELOW.</b> | If you do not fill out and send in the Consent to Join Form you will not become a party to this case. You will not be bound by any decision of the Court and will not share in any potential monetary recovery, if any that may be awarded. But you keep any rights to sue Defendants separately about the same legal claims in the case, provided you do so in a timely manner. |

**NORTH CAROLINA STATE LAW CLAIM**

WHAT YOU MAY DO:

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| <b>YOU ARE AUTOMATICALLY A MEMBER OF THIS CASE UNLESS YOU “OPT OUT”.</b> | You will be represented by the attorneys designated by the Court to represent the class (“class counsel”) unless you exclude yourself from the class.  |
| <b>IF YOU WISH TO EXCLUDE YOURSELF, YOU MUST OPT-OUT.</b>                | If you do not want to participate in this class action part of the case, you must send the opt-out form by mail or fax to: Gilda A. Hernandez, Esq., The Law Offices of Gilda A. Hernandez, PLLC, 1020 Southhill Dr., Ste 130, Cary, NC 27513. 919-741-8693. If you do not participate in this class action part of the lawsuit, you will not be eligible to receive any benefits in the event that a settlement or judgment is obtained on this claim. If you do not opt-out of this class action you will be bound by the judgment of the Court on all issues, whether favorable or unfavorable. |

## BACKGROUND INFORMATION

### 1. WHY AM I GETTING THIS NOTICE?

The purpose of this Notice is to:

1. Inform you of the existence of a case in which you are potentially eligible to participate;
2. Advise you of how your rights may be affected by this case; and
3. Instruct you on the procedure for participating in this case, if you decide to join.

Defendants' records reflect that you were employed by Defendants at one or more of the locations included in this case during, on, or after May 17, 2015.

The Court has certified a class and collective action lawsuit that may affect you. A trial may be necessary to decide whether the claims being made against Defendants on your behalf are correct or whether Defendants' defenses to those claims are correct. The Honorable James C. Dever, III, District Court Judge in the United States District Court for the Eastern District of North Carolina is overseeing this lawsuit.

### 2. WHAT IS THE LAWSUIT ABOUT?

On May 17, 2018 an action was filed against Defendants San Jose Restaurants and the owners individually on behalf of Named Plaintiff Laura Pontones, and all other similarly situated individuals who worked for the company as servers. Specifically, Plaintiff alleges claims in this lawsuit on behalf of himself and all other employees: (1) Defendants failed to pay Servers minimum wage; (2) Defendants failed to pay overtime premium pay for each hour they worked in excess of 40 hours per week; and (3) Defendants took unlawful deductions from Servers' tips.

Plaintiff seeks back pay wages, prejudgment interest, and liquidated damages under both state and federal laws for herself and all other current or former servers who worked for Defendants San Jose Restaurants on [Insert date three years from date of Court's Order granting certification]. Defendants deny any wrongdoing and contend that all employees have been properly paid for all work they performed.

### 3. WHAT IS THIS CASE ABOUT PURSUANT TO THE NORTH CAROLINA CLAIMS?

In the state law part of this lawsuit, Plaintiff claims that Defendant must pay back wages for the actual hours servers worked, including minimum, straight, and/or unpaid regular and overtime wages, and any unlawful deductions taken from servers' tips plus an equal amount in additional liquidated damages, interests, plus costs in attorney's fees.

### 4. DOES THE LAW PROTECT ME FROM RETALIATION?

Yes. If you decide to join this case or participate in this case in any way, ***federal law prohibits Defendants from retaliating against you in any way. If you have concerns,***

*please contact class counsel noted in section 10 below*

5. WHAT ABOUT IMMIGRATION STATUS?

Your immigration status will not be the subject of this lawsuit. You are entitled to seek recovery regardless of your immigration status.

6. HOW DO I KNOW IF I AM PART OF THIS CLASS ACTION?

You may be a member of the FLSA collective action by returning the opt-in form if you worked for any Defendant San Jose Restaurant as a server on or after May 17, 2015.

You are a member of the North Carolina class action if you worked for any Defendant San Jose Restaurant as a server on or after May 17, 2016.

**YOUR RIGHTS AND OPTIONS**

7. HOW DO I JOIN THIS CASE AND WHAT HAPPENS NEXT?

If you wish to join this case, you must complete the attached "Consent to Join" form and return it to the address at the bottom of the form in the business reply envelope included.

**THIS FORM MUST BE POSTMARKED NO LATER THAN [INSERT DATE NINETY DAYS FROM THE DATE NOTICE IS MAILED TO CLASS MEMBERS, 2019].**

- If you decide to join this lawsuit, we will keep you informed of the status of the case.
- If your completed Consent to Join form is not postmarked on or before that date, you will not be allowed to join this case.

Joining this case does not guarantee that you will receive any money from the case because a monetary recovery is not certain. If you join this case, you will be bound by any judgment entered by the Court, whether favorable or unfavorable and you will forfeit the right to sue Defendants as an individual for the same claims made in this case.

8. IF THE EMPLOYEE IS SUCCESSFUL IN THIS CASE, WHAT MONEY MIGHT I RECEIVE?

The Plaintiff seeks money for herself and other servers employed by Defendants, including you, should you decide to join this case. In particular, she seeks:

- (1) Backpay for unpaid regular and overtime hours worked and time and one-half for

- hours over 40 per week;
- (2) Reimbursement of unlawful deductions;
  - (3) Liquidated or doubled monetary damages;
  - (4) Pre-Judgment Interest;
  - (5) That Defendant pay Plaintiff's attorneys fees; and
  - (6) That Defendant pay Plaintiff's costs of the case.

#### 9. WHAT HAPPENS IF I DON'T JOIN THIS CASE?

If you decide not to join this case, you will not be affected by any judgment or settlement on the Plaintiff's legal claims under the Fair Labor Standards Act. You also may not be allowed to participate in any money damages if Plaintiff wins. You will also retain the right to sue Defendants individually if you so choose provided you do so in a timely manner.

### YOUR LEGAL REPRESENTATION IF YOU JOIN

#### 10. WHO WILL BE MY LAWYER?

The Court ordered that attorneys at The Law Offices of Gilda A. Hernandez, PLLC may represent you and all collective action members. However, if you decide to join this case, you have the right to hire your own lawyers at your own expense. You can contact the firm to learn more information about them, their practice, and their lawyers' experience at the information listed below:

Gilda A. Hernandez, Esq.  
Charlotte Smith, Esq.  
**THE LAW OFFICES OF  
GILDA A. HERNANDEZ, PLLC**  
1020 Southhill Dr., Ste 130  
Cary, NC 27513  
Tel: (919) 741-8693  
Fax: (919) 869-1853  
[rkreuz@gildahernandezlaw.com](mailto:rkreuz@gildahernandezlaw.com)

#### 11. HOW WILL THE LAWYERS BE PAID?

The Class Representative has entered into a contingency fee agreement with Class Counsel. Under this agreement, you are not responsible for paying out of pocket any of the attorneys' fees or costs expended in the lawsuit. By returning the opt-in form enclosed, you are agreeing to be bound by this agreement. Class Counsel will be paid as follows: (1) if there is a settlement, Class Counsel may ask the Court to award it up to 33% of any recovery obtained in addition to reasonable out of pocket costs; (2) if there is a trial and plaintiffs

prevail, Class Counsel may ask the Court to award it 33% of the award and reasonable out of pocket costs and/or may ask the Court to order Defendant to pay their attorneys' fees and costs separately, on top of the award to the plaintiffs.

If you elect to opt into this lawsuit, *you will not be required to pay attorneys' fees or expenses to the Plaintiff's lawyers*. This is true regardless of whether or not you win or lose this case. The lawyers for Plaintiff will be paid only if Plaintiff wins or Defendants settle the case. If that happens, these fees will either be paid by Defendant or as a percentage of any monetary judgment in favor of Plaintiffs as ordered by the Court. *If there is no recovery, there will be no attorneys' fees paid to the lawyers.*

## THE TRIAL

### 12. HOW AND WHEN WILL THE COURT DECIDE WHO IS RIGHT?

If the lawsuit is not resolved by a settlement or by the Court before trial, the plaintiffs will have to prove their claims at a trial. The trial would take place in the United States District Court for the Eastern District of North Carolina. During the trial, a jury will hear evidence, including the testimony of witnesses, to help them reach a decision about whether the plaintiffs are right about the claims in the lawsuit. No guarantee exists that the plaintiffs will prevail, or that they will be awarded any damages.

### 13. DO I HAVE TO COME TO TRIAL?

You are not required to attend the trial unless one of the parties asks you to be a witness at the trial. If Class Counsel or defendants' counsel believes that your testimony may be helpful to establishing important facts in the litigation, Class Counsel will contact you before the trial to provide more information regarding your participation in the trial.

## GETTING MORE INFORMATION

If you have any questions or would like additional information, please contact Class Counsel, whose contact information is provided above in Paragraph 10.

**THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL EASTERN DISTRICT OF NORTH CAROLINA COURT, THE HONORABLE JUDGE JAMES C. DEVER, III, UNITED STATES DISTRICT JUDGE. THE COURT TAKES NO POSITION REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR DEFENDANT'S DEFENSES.**

**DO NOT CONTACT THE CLERK OF COURT REGARDING THIS NOTICE.**

**IMPORTANT REMINDER REGARDING CLASS AND COLLECTIVE ACTION AGAINST SAN JOSE  
RESTAURANTS**

Within the past thirty (45) days, you were mailed a Court-authorized Notice explaining that you are eligible to participate in a class and collective action of claims on behalf of all servers who worked for Defendants San Jose Restaurants for alleged unpaid wages and reimbursement of unlawful deductions from tips.

**IMPORTANT: Our records indicate that you have not submitted a Consent Form. In order to participate in the collective/class action, you must complete the Consent Form sent to you with the Court-Authorized Notice and mail, e-mail, or fax it to Class Counsel:**

Gilda A. Hernandez, Esq.  
Charlotte Smith, Esq.  
**THE LAW OFFICES OF  
GILDA A. HERNANDEZ, PLLC**  
1020 Southhill Dr., Ste 130  
Cary, NC 27513  
Tel: (919) 741-8693  
Fax: (919) 869-1853  
rkreuz@gildahernandezlaw.com

If you have any questions about the notice or the case, or if you did not receive or no longer have the Notice, you should contact Class Counsel by calling (919) 741-8693 or emailing rkreuz@gildahernandezlaw.com.

**In order to participate in this collective/class action, your Consent Form must be post-marked no later than [INSERT DUE DATE] if returned by U.S. Mail, or received by [INSERT DUE DATE] if returned by fax or e-mail.**